
CHAPTER 39
RESTRICTING ACCESS TO
CRIMINAL HISTORY INFORMATION

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**RESTRICTING DISCLOSURE OF CRIMINAL RECORDS WHEN
PERSON IS NOT CONVICTED OR CONVICTION IS VACATED**

[I.C. 35-38-5-5.5](#)

Public Law 181-2014 (H.E.A. 1482) repealed I.C. 35-38-5-5.5 and I.C. 35-38-8 effective July 1, 2013.

On July 1, 2013 it will no longer be possible to file a petition under these sections of code.

Indiana Code 35-38-9 became effective July 1, 2013 and contains the new procedures that allow certain arrest records and criminal convictions to be sealed or expunged. See Chapter 44 for details.

I.C. 35-38-5-5.5 allows a person who was charged with a crime, but who (1) is not prosecuted or the charges against him are dismissed, (2) is acquitted of all criminal charges, or (3) is convicted of the crime and the conviction is subsequently vacated, to petition a court to restrict disclosure of the records related to the arrest to a noncriminal justice organization or an individual.

The petition must be verified and filed in the court in which the charges were filed if the person was not prosecuted or the charges were dismissed, and filed in the court in which the person was tried if he was acquitted or his conviction was vacated. The petition should be filed under the case number of the original criminal case, but if the prosecution was dropped before a case number was assigned, the petition should be assigned an MC case type number. No filing fees are required.

The petition may be filed no earlier than 30 days after the person is acquitted or the charges dismissed (if the charges are not refiled). If the person is convicted, but the conviction is vacated, the petition may be filed no earlier than 365 days after the order is final or the opinion or memorandum decision vacating the conviction is certified. It is to be served on the prosecuting attorney and the state central repository for records. If

the prosecuting attorney wishes to oppose a petition, he must file a notice of opposition with the court within 30 days after the petition is filed.

The court may (1) summarily grant the petition, (2) set the matter for hearing, or (3) summarily deny the petition if the court makes certain findings. If the prosecuting attorney files a notice of opposition and the court does not summarily grant or summarily deny the petition, the court must set the matter for a hearing. After a hearing is held, the court must grant the petition unless the petitioner is being reprosecuted on charges related to the original conviction. If the court grants the petition, the court must order the State Police Department not to disclose or permit disclosure of the petitioner's limited criminal history information to a noncriminal justice organization or an individual under [I.C. 10-13-3-27](#).

PROCEEDINGS TO RESTRICT ACCESS TO CONVICTION RECORDS FOR MISDEMEANOR AND NON-VIOLENT CLASS D FELONY CONVICTIONS

I.C. 35-38-8

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I.C. 35-38-8 is a new chapter that requires a court to restrict access to criminal history information related to misdemeanor or nonviolent Class D felony convictions under certain circumstances. With a limited exception, the law does not apply to sex or violent offenders.¹

Eight (8) years after the date a person who was: (1) convicted of a misdemeanor or a Class D felony that did not result in injury to a person, or (2) adjudicated a delinquent child for committing an offense that, if committed by an adult, would be a misdemeanor or Class D felony that did not result in injury to a person, completes his sentence and satisfies any obligations imposed upon him by the sentence, he may petition the

¹ A person whose status as a sex or violent offender is solely due to his conviction for Sexual Misconduct with a Minor (IC 35-42-4-9) and who proves that the defense described in IC 35-42-4-9(3) applies to him may file a petition under this statute. I.C.35-38-8-1.

sentencing court to order the state police department to restrict access to the records concerning his arrest and involvement in criminal or juvenile court proceedings.

Although the petition is to be filed in the sentencing court, the Division advises that a proceeding to restrict access under I.C. 35-38-8 is a civil proceeding. A MI case type should be assigned and regular civil filing fees should be assessed. If the person seeks to restrict access to multiple convictions they may be included in one petition, provided that the convictions were all in the same court. Make sure to cross reference the criminal case numbers in the MI case's CCS. Although the statute is silent as to whom, if anyone, should be served with the Petition, the Division advises that the Indiana State Police Department should be served because it is specifically referred to in I.C. 35-38-8-3 and that department is the official state repository for criminal history information.

Under I.C. 35-38-8-4, the court shall grant the petition if: (1) the person is not a sex or violent offender;² (2) the person's conviction or adjudication was for a misdemeanor or a Class D felony not resulting in injury to a person; (3) eight years have passed since the person completed the sentence and all obligations imposed as part of the sentence, and (4) the person has not been convicted of a felony since the person completed the sentence and satisfied all obligations imposed as part of the sentence.

If the court grants the person's petition, it must order the department of correction and each law enforcement agency or other person who incarcerated, provided treatment for, or provided other services to the person to prohibit the release of the person's records or information related to the misdemeanor or nonviolent Class D felony in the person's records to a noncriminal justice agency without a court order. Additionally, the court must order any state, regional, or local central repository for criminal history information to prohibit the release of the same information to a noncriminal justice agency without a court order.

Finally, if the court orders the person's records restricted under the law, I.C. 35-38-8-7 provides that the person may legally state on an application for employment or any other document that he has not been arrested for or convicted of the felony or misdemeanor recorded in the restricted records.

PRACTICE TIPS

Although neither I.C. 35-38-5-5.5 nor I.C. 35-38-8 expressly requires the court to restrict access to the court's records to noncriminal justice agencies or persons, failure to do so would largely frustrate the purposes of the statutes.

² Or, if the person is a sex or violent offender, the exception described in footnote 1 applies.

For Judges

The court has authority under [Administrative Rule 9\(G\)\(4\)](#) to exclude information from public access by specific court order. In granting relief to the petitioner in either proceeding, the Division recommends that the court consider including in its order a direction to the clerk to remove the records from public access, and in the case of a successful petition under I.C. 35-38-8, to remove records of that case from public access as well.

Because IC 35-38-8 includes a wide range of potential persons or entities who must be ordered not to disclose the information, the Division recommends that the court advise the petitioner that it is the petitioner's responsibility to inform the court of all persons or entities who possess the information and only those persons or entities identified by the petitioner will be included in the court's order restricting access.

For Clerks

A copy of the petition, whether filed under IC 35-38-8 or under IC35-38-5-5.5 should be mailed to the Indiana State Police, Records Division, IGN, 100 N. Senate Avenue, Room 301, Indianapolis, Indiana 46204.

The Division has developed a form petition for restricting access under IC 35-38-8 which may be found online in the Indiana Supreme Court Self Service Center.

If the petition to restrict access was filed in a case separate from the criminal case(s), the clerk should cross reference the order granting restricted access in the related criminal cases(s).

The criminal case file(s) plus the case file for the petition to restrict access (if filed in a separate case) and any orders in the RJO related to these cases should be removed from public access.

It is important to remember that *an order restricting access is not the same as an expungement*, and this is true whether the order is entered under I.C.35-38-5-5.5 or under I.C. 35-38-8-5. The records should still be available to the parties, their attorneys and to criminal justice agencies, but access to the records by noncriminal justice agencies is prohibited without a court order.

Last modified 12/30/14